

1 RONALD L. JOHNSTON (State Bar No. 057418)
LAURENCE J. HUTT (State Bar No. 066269)
2 SUZANNE V. WILSON (State Bar No. 152399)
JAMES S. BLACKBURN (State Bar No. 169134)
3 ARNOLD & PORTER LLP
1900 Avenue of the Stars, 17th Floor
4 Los Angeles, California 90067-4408
Telephone: (310) 552-2500
5 Facsimile: (310) 552-1191

6 Attorneys for Defendants
7 VERISIGN, INC. and
NETWORK SOLUTIONS, INC.
8

9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

11
12 REGISTERSITE.COM, an Assumed
Name of ABR PRODUCTS INC., a
13 New York Corporation, et al.,

14 Plaintiffs,

15 v.

16 INTERNET CORPORATION FOR
ASSIGNED NAMES AND
17 NUMBERS, a California corporation;
VERISIGN, INC., a Delaware
18 Corporation; NETWORK
SOLUTIONS, INC., a Delaware
19 Corporation; ENOM, INC., a
Washington Corporation; ENOM
20 FOREIGN HOLDINGS
CORPORATION, a Washington
21 Corporation; and DOES 1-10,
inclusive,

22 Defendants.
23

Case No. CV 04-1368 ABC (CWx)

**OPPOSITION OF DEFENDANTS
VERISIGN, INC. AND
NETWORK SOLUTIONS, INC.
TO PLAINTIFFS' REQUEST
FOR JUDICIAL NOTICE IN
CONNECTION WITH MOTION
TO DISMISS FOR FAILURE TO
STATE A CLAIM**

Date: July 12, 2004
Time: 10:00 a.m.
Courtroom: 680 – Roybal Fed. Bldg.
Hon. Audrey B. Collins

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1 Defendants VERISIGN, INC. (“VeriSign”) and NETWORK SOLUTIONS, INC.
2 (“NSI”) submit this Opposition to Plaintiffs’ Request for Judicial Notice in connection
3 with VeriSign and NSI’s pending Motion to Dismiss the First Amended Complaint for
4 failure to state a claim for relief under Rule 12(b)(6).

5 Plaintiffs ask the Court to take judicial notice of a Corrected Memorandum of
6 Points and Authorities in support of a Demurrer filed by VeriSign and NSI in *Smiley v.*
7 *Internet Corp. for Assigned Names and Numbers*, Los Angeles Superior Court Case No.
8 BC 254659. Plaintiffs’ Request is improper, and should be denied, for two reasons.

9 First, Plaintiffs’ judicial notice request is improper because they are asking the
10 Court to take judicial notice of an unrelated state court document not merely for the fact
11 that it *was filed*, but for the inappropriate purpose of evaluating legal arguments
12 contained therein. As a general rule, “documents are judicially noticeable only for the
13 purpose of determining what statements are contained therein, not to prove the truth of
14 the contents or any party’s assertion of what the contents mean.” *United States v. S.*
15 *Cal. Edison Co.*, 300 F. Supp. 2d 964, 975 (E.D. Cal. 2004). Therefore, even though a
16 document may be a matter of public record, “[a] court may not take judicial notice of
17 one party’s opinion of how [the document] should be interpreted.” *Id.* at 974. Here,
18 Plaintiffs are seeking judicial notice not merely of the fact that the *Smiley* record was
19 filed, but also their *interpretation* of the *Smiley* record as somehow inconsistent with the
20 positions advanced by VeriSign and NSI in this action. Plaintiffs’ request is improper,
21 and should be rejected.

22 Second, judicial notice of the *Smiley* record would be improper because the
23 record is irrelevant to any issue raised by VeriSign and NSI’s Motion to Dismiss the
24 First Amended Complaint. Even if a document is otherwise in a form proper for
25 judicial notice, courts decline to take judicial notice if the document is not relevant to
26 the subject dispute. *E.g., Pac. Gas & Elec. Co. v. Lynch*, 216 F. Supp. 2d 1016, 1025-
27 26 (N.D. Cal. 2002) (declining to take judicial notice of stipulated judgment and
28 settlement documents in related action on relevancy grounds); *Plevy v. Haggerty*, 38 F.

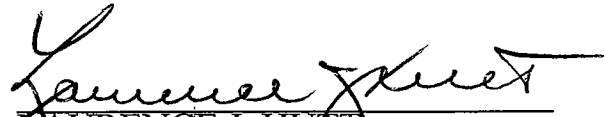
1 Supp. 2d 816, 821 (C.D. Cal. 1998) (“Although an analysts’ report may be proper
2 subject matter for judicial notice, the Court does not believe that these exhibits are
3 relevant to Defendants’ motion to dismiss.”).

4 Plaintiffs contend that judicial notice of the *Smiley* record “is necessary to make
5 the Court aware that Defendants have taken inconsistent positions on [a party’s
6 standing to enjoin an allegedly illegal lottery].” (Pls.’ Req. for Judicial Notice at 2.)
7 However, the *Smiley* record itself belies any claim of inconsistency. Nothing about
8 VeriSign’s and NSI’s legal positions in *Smiley* is inconsistent with their positions here.
9 In this action, VeriSign and NSI rely on longstanding, well-established federal law
10 requiring a plaintiff to meet Article III standing requirements in order to sue in federal
11 court. In *Smiley*, VeriSign and NSI relied on longstanding, well-established state law
12 prohibiting, as a matter of equity, a party who participated in an allegedly illegal lottery
13 from recovering its monetary losses stemming from the lottery. VeriSign and NSI did
14 not raise any issue of Article III standing in *Smiley*, and that issue obviously was not
15 before that court. Notably, Plaintiffs do not dispute that the law supports the positions
16 advanced by VeriSign and NSI in both cases. Moreover, Plaintiffs’ introduction of the
17 *Smiley* record would in no way address, much less cure, their Article III standing
18 problem in this action.

19 For the foregoing reasons, the Court should decline to take judicial notice of the
20 *Smiley* record.

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22 DATED: June 30, 2004.

ARNOLD & PORTER LLP
RONALD L. JOHNSTON
LAURENCE J. HUTT
SUZANNE V. WILSON
JAMES S. BLACKBURN

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27 By: 
LAURENCE J. HUTT
Attorneys for Defendants VeriSign,
28 Inc. and Network Solutions, Inc.

1 RONALD L. JOHNSTON (State Bar No. 057418)
2 LAURENCE J. HUTT (State Bar No. 066269)
3 SUZANNE V. WILSON (State Bar No. 152399)
4 JAMES S. BLACKBURN (State Bar No. 169134)
5 ARNOLD & PORTER LLP
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Los Angeles, California 90067-4408
Telephone: (310) 552-2500
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Case No. CV 04-1368 ABC (CWx)

PROOF OF SERVICE

Courtroom: Room 680 – Roybal Bldg.
Judge: Hon. Audrey B. Collins

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2 **PROOF OF SERVICE**

3 STATE OF CALIFORNIA)
4 COUNTY OF LOS ANGELES) ss

5 I am employed in the County of Los Angeles, State of California. I am over
6 the age of 18 and not a party to the within action. My business address is 777 South
7 Figueroa Street, 44th Floor, Los Angeles, California 90017-5844.

8 On **June 30, 2004**, I served the foregoing document described as:

9 **PLEASE SEE ATTACHED LIST OF DOCUMENTS**

10 by placing true copies thereof enclosed in sealed envelopes addressed as stated
11 on the attached mailing list.

12 by placing the original and a true copy thereof enclosed in sealed
13 envelope(s) addressed as follows:

14 **BY MAIL** I placed such envelope with postage thereon prepaid in the United
15 States Mail at 777 South Figueroa Street, 44th Floor, Los Angeles, California
16 90017-5844. Executed on **June 30, 2004** at Los Angeles, California.

17 **BY PERSONAL SERVICE** I caused such envelope to be delivered by hand
18 to the office of the addressee. Executed on _____ at Los Angeles, California.

19 **BY FACSIMILE** The above-referenced document (together with all exhibits
20 and attachments thereto) was transmitted via facsimile transmission to the
21 addressee(s) as indicated on the attached mailing list on the date thereof. The
22 transmission was reported as completed and without error. Executed on
23 at Los Angeles, California.

24 **BY FEDERAL EXPRESS** I am readily familiar with Arnold & Porter LLP's
25 business practices of collecting and processing items for pickup and next
26 business day delivery by Federal Express. Under said practices, items to be
27 delivered the next business day are either picked up by Federal Express or
28 deposited in a box or other facility regularly maintained by Federal Express in
the ordinary course of business on that same day with the cost thereof billed to
Arnold & Porter LLP's account. I placed such sealed envelope for delivery by
Federal Express to the offices of the addressee(s) as indicated on the attached
mailing list on the date hereof following ordinary business practices. Executed
on _____ at Los Angeles, California.

STATE I declare under penalty of perjury under the laws of the State of
California that the foregoing is true and correct.

FEDERAL I declare that I am employed in the office of a member of the bar
of this court at whose direction the service was made.

Lupe Perales

SERVICE LIST

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Derek A. Newman, Esq.
C. Christopher Winter, Esq.
Venkat Balasubramani, Esq.
Roger M. Townsend, Esq.
Newman & Newman
505 Fifth Avenue South, Suite 610
Seattle, Washington 98104

Jeffrey A. LeVee, Esq.
Jones Day
555 West Fifth Street, Suite 4600
Los Angeles, California 90013

Frederick F. Mumm, Esq.
Davis Wright Tremaine LLP
865 So. Figueroa Street, Suite 2400
Los Angeles, California 90017-2566

LIST OF DOCUMENTS

1. **REPLY MEMORANDUM IN SUPPORT OF MOTION BY DEFENDANT VERISIGN, INC. TO DISMISS PLAINTIFFS' ELEVENTH CLAIM FOR RELIEF FOR IMPROPER VENUE**
2. **OPPOSITION OF DEFENDANTS VERISIGN, INC. AND NETWORK SOLUTIONS, INC. TO PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE IN CONNECTION WITH MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM**
3. **REPLY MEMORANDUM OF DEFENDANTS VERISIGN, INC. AND NETWORK SOLUTIONS, INC. IN SUPPORT OF MOTION TO DISMISS THE FIRST AMENDED COMPLAINT FOR FAILURE TO STATE A CLAIM PURSUANT TO FED. R. CIV. P. 12(b)(6)**
4. **PROOF OF SERVICE**